

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 23rd November, 2015

Petition No. 345 of 2014

Tata Teleservices Ltd., New Delhi	...Petitioner
Vs.	
Union Of India, New Delhi	... Respondent

Petition No. 357 of 2014

Tata Teleservices Ltd., New Delhi	...Petitioner
Vs.	
Union Of India, New Delhi	... Respondent

BEFORE :

**HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE DR. KULDIP SINGH, MEMBER
HON'BLE MR. B.B. SRIVASTAVA, MEMBER**

For Petitioner	: Mr. Ramji Srinivasan, Sr. Advocate Mr. Nitin Kala, Advocate Mr. Kunal Singh, Advocate
For Respondent	: Mr. S.S. Shamsbery, Advocate Mr. Vikas Malik, Advocate

ORDER

Kuldip Singh: The petitioner is aggrieved by the action of the respondent Union of India, Department of Telecommunications, in raising demands levying interest on alleged short fall of payment towards penalty imposed by the respondent for alleged violation of subscriber verification norms.

The petitioner, Tata Teleservices Ltd., is a service provider holding Unified Access Service (UAS) License granted by the respondent. Petition no. 345 of 2014 is in respect of Rajasthan Circle and petition no. 357 of 2014 is in respect of Orissa Circle. Since the facts of the two cases are similar, these are being disposed of by this common order.

Brief facts of the case are as follows.

In terms of the circulars/guidelines issued by the respondent from time to time, the petitioners are required to get a Customer Acquisition Form (CAF) filled and do certain verification of a subscriber before activating its service. The respondent, Department of Telecommunications (DOT), Union of India, raised certain demands on the petitioner for alleged violation of these subscriber verification norms. These demands were raised for the period between 02.08.2010 to 06.11.2012 for Rajasthan Circle¹ and for the period between

¹ Petition No. 345/2014

28.07.2010 to 28.06.2011 for Orissa Circle² of the petitioner. Similar demands were raised on other service providers also.

Some of the demands and the power/jurisdiction of the respondent to issue circulars/guidelines in this regard were challenged before this Tribunal by an association of the operators in Cellular Operators Association of India & others Vs. DoT and Anr. in petition no. 252 of 2011. The petition was disposed of by the Tribunal on 12.04.2012. While upholding the legality and validity of the circulars/guidelines in question, the Tribunal directed that the financial penalty should be calculated on the principals as followed in the Income Tax System i.e. rate of penalty is to be calculated separately for each slab. The order of the Tribunal in this regard is as under:

“The financial penalty should be calculated on the principles as it is followed in the Income Tax system, i.e. rate of financial penalty to be calculated separately for each slab and the total amount of penalty arrived at.”

We may note here that an application under Order II Rule 2 of the CPC praying for leave of this Tribunal to file separate petitions questioning the demand notices issued by the respondents on the operators at a later stage, if any occasion arises therefor, was also allowed. Further the Tribunal also made it clear that the

² Petition No. 357/2014

petitioners cannot be estopped from questioning the latest circulars in respect of which the doctrine of estoppel will have no application.

During the pendency of the above petition, the Tribunal vide its orders dated 18.05.2011 and 03.06.2011 permitted the operators to continue paying the penalty towards the alleged violations at the same rate as they were paying earlier. The order of the Tribunal dated 18.05.2011 in this regard, which was subsequently made absolute on 03.06.2011, is as under:

“However, in the meantime, the respondent may not take any coercive step to implement its interpretation of the earlier order in terms of its letter dated 3.2.2011, subject to the following conditions:-

- (i) The operators shall pay the penalty at the same rate which they have been paying so long immediately before 3.2.2011.
- (ii) In the event the operators are intimated about the suspicious identity of any of the customers, his connection shall be withdrawn.
- (iii) In the event the DoT issues any instructions in this behalf the compliance thereof shall be intimated to DoT within three days thereafter.
- (iv) For the aforementioned purpose even a prima facie finding of the DoT shall sub-serve the purpose.”

Subsequent to the interim order as above, the petitioner, without prejudice to its case on merits, made certain payments towards the demands raised.

The impugned demands have been raised on 28.07.2014 and 31.07.2014 for Rajasthan Circle , and on 22.05.2014, 03.07.2014 and 05.08.2014 for Orissa Circle. The demands are on two counts; short payment made for penalty; and

interest on the short payment as well as on the penalty amount from the date of original demand till the payment was made in terms of the interim order of the Tribunal.

The dispute in the present petitions is limited to the interest levied by the respondent. It is the case of the petitioner that though it has not violated any norms regarding subscriber verification and the circulars under which the demands are raised are under challenge before various High Courts, it is limiting the challenge in the present petition to the interest levied against a demand which is non-existent in view of the judgment of the Tribunal dated 12.04.2012 in petition no. 252 of 2011. As per it, the issue of levy of interest does not arise as the amounts paid by it are withheld by the respondent even after the judgment of 12.04.2012.

We may note here that on 26.04.2013, the respondent issued a circular that ,inter alia, provided as under:

“The demands which have either not been paid at all or have been partially paid by the operators may be recovered as per directions contained in above-said para 332(xi) of TDSAT Judgment dated 12.04.2012 i.e. **calculating financial penalty on the principals as it is followed in the Income Tax System.**” (emphasis supplied).

From the above circular of the respondent, it is obvious that it was aware that the financial penalty had to be recalculated in terms of the judgment of the Tribunal. We also note that though the judgment was passed in April, 2012, the respondent issued the above circular after a year and the respondent took yet one

more year to issue the impugned demands. We also note that the short payments calculated in the impugned demands are far less than the amount of interest calculated on these. To take a few examples, against the original demand dated 02.08.2010 for an amount of Rs. 75,56,000/-, the petitioner deposited Rs. 36,06,000/- on 04.07.2011 which, as per the revised demand calculated by the respondent and intimated to the petitioner on 28.07.2014, should have been 36,14000/- resulting in a short fall of Rs. 8000/-. However, since this revised demand is calculated by the respondent after more than two years, the interest on this short payment has in the meanwhile grown to 3,45,741.69/- Similarly interest³ on short payments of Rs.26000/- and Rs.10900/-, has become 8,55,348.98/- and 2,38,179.93/-

We find that the petitioner had acted bona-fide in calculating and depositing the amounts in terms of the interim order passed by the Tribunal and it was for the respondent to check, calculate and intimate the amounts in terms of the Tribunal judgment. Though the difference on this account is minor, the delay of more than two years on the part of the respondent has resulted in the huge interest which is under challenge.

Be that as it may, we find that the original demands were much more than the revised demand as calculated in terms of the Tribunal Judgment. Further, in view of the fact that the demand had to be recalculated in terms of the Tribunal's

³ Annexure P-1 pg. 11 petition no. 345/2014.

Judgment, the original demand had become non-est and the demand would fructify only when the revised demand was raised in terms of the judgment. We, therefore, find that the respondent is wrong in levying the interest from the date of original demand as well as on short payments. The impugned demands to the extent of interest component are accordingly set aside.

There will be no order as to costs.

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(Aftab Alam)
Chairperson

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(Kuldip Singh)
Member

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(B.B. Srivastava)
Member